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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,235	06/11/2002	Jaak Decuypere	DCLQ:003	5573

7590 08/20/2004

Patricia Kammerer
Howrey Simon Arnold & White
750 Bering Drive
Houston, TX 77057-2198

EXAMINER	
MARX, IRENE	
ART UNIT	**PAPER NUMBER**
1651	

DATE MAILED: 08/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/009,235	DECUYPERE ET AL.	
	Examiner	Art Unit	
	Irene Marx	1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 June 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) *15-16 and 17-19* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14,20 and 21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The application should be reviewed for errors and conformity with domestic practice.

The election without traverse and amendment filed 6/29/04 is acknowledged. Claims 1-14 and 20-21 are being considered on the merits.

Claims 15-16 and 17-19 are withdrawn from consideration as directed to a non-elected invention.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14 and 20-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is confusing in that the nature of "medium chain fatty acids" is unclear. From claim 8 it appears that applicant intends C4-C12 fatty acids. However, this is not indicated in claim 1.

Claim 4 is redundant and confusing in the recitation "at least one or more" followed by "and/or". Amendment to "at least one" followed by "or" would be remedial.

Regarding claim 5, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 14 fails to find proper antecedent basis in claim 14 for "said triglyceride". Claim 1 recites "at least one triglyceride". Amendment to "the" rather than "said" would obviate the rejection.

Claim 20 is vague and indefinite in the recitation of "for production and companion animals". The intended target animals are uncertain. For example, the product produced by early weaned piglets is not clearly delineated.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-10 and 20-21 rejected under 35 U.S.C. 102(b) as being anticipated by Hull *et al.* (U.S. Patent No. 3,477,853)

The claims are directed to a feed composition comprising at least one triglyceride having medium chain fatty acids and a lipolytic enzyme for various intended uses and prepared by various processes.

The reference discloses a composition suitable as a feed comprising medium chain fatty acids and one or more lipolytic enzymes. See, e.g., col. 2, lines 23-61. The intended methods of using the same feed compositions as a medicament, an antimicrobial and to prevent digestive upsets does not change the composition itself, which is taught by the reference. Similarly, the various method of making recited do not appear to modify the composition.

Furthermore, the composition is claimed as a product-by-process. Since the Patent and Trademark Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make comparisons therewith, a lesser burden of proof is required to make out a case of prima facie anticipation/obviousness for product-by-process claims because of their peculiar nature than when a product is claimed in the conventional manner. MPEP 2113.

Claims 1-9 and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Haas *et al.* (U.S. Patent No. 3,857,968).

The claims are directed to a feed composition comprising at least one triglyceride having medium chain fatty acids and a lipolytic enzyme for various intended uses and prepared by various processes.

The reference discloses a feed composition comprising butter oil, which comprises medium chain fatty acids, and one or more lipolytic enzymes. See, e.g., Example III, and Table II. The intended methods of using the same feed compositions as a medicament, an antimicrobial and to prevent digestive upsets does not change the composition itself, which is taught by the reference. Similarly, the various method of making recited do not appear to modify the composition.

Furthermore, the composition is claimed as a product-by-process. Since the Patent and Trademark Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make comparisons therewith, a lesser burden of proof is required to make out a case of prima facie anticipation/obviousness for product-by-process claims because of their peculiar nature than when a product is claimed in the conventional manner. MPEP 2113.

Claims 1-11 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hull *et al.* taken with Haas *et al.*.

Each of the Hull and Haas references discloses a composition suitable as a feed comprising medium chain fatty acids and one or more lipolytic enzymes. See, e.g., col. 2, lines 23-61 and Example, III, Table II, respectively. The intended methods of using the same feed compositions as a medicament, an antimicrobial and to prevent digestive upsets does not change the composition itself, which is taught by the reference. Similarly, the various method of making recited do not appear to modify the composition.

Furthermore, the composition is claimed as a product-by-process. Since the Patent and Trademark Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make comparisons therewith, a lesser burden of proof is required to make out a case of prima facie anticipation/obviousness for product-by-process claims because of their peculiar nature than when a product is claimed in the conventional manner. MPEP 2113.

The references differs from the claimed invention in that a mixture of lipase and esterase is not used. However, at least the Hull reference discloses both lipase and esterase in the mixture. It would be have been well within the ordinary skill of the art to use these two enzymes together in combination with a medium chain fatty acid triglyceride substrate in a feed

composition because the action of the two enzymes is different and a combination thereof would achieve better results more efficiently (See, e.g., col. 2, lines 40-55).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to modify the process of Hull and Haas by using both a lipase and an esterase in combination together with a at least one medium chain fatty acid triglyceride substrate in a feed composition for the expected benefit of obtaining a feed composition that is more easily digestible and which is more palatable because the action of the two enzymes is different and a combination thereof would achieve better results more efficiently.

Thus, the claimed invention as a whole was clearly *prima facie* obvious, especially in the absence of evidence to the contrary.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (571) 272-0919. The examiner can normally be reached on M-F (6:30-3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on (571) 272-0926. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Irene Marx
Primary Examiner
Art Unit 1651